

S. 2342

To amend the Export Administration Act of 1979.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 23 (legislative day, FEBRUARY 20), 1984

Mr. HELMS introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Export Administration Act of 1979.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That section 1 of the Export Administration Act of 1979 is
4 amended by striking out "Administration" and inserting in
5 lieu thereof "Control".

FINDINGS

7 SEC. 2. Section 2 of the Export Administration Act of
8 1979 is amended—

9 (1) by striking out paragraphs (1), (2), (3), (6), and
10 (7) and designating the remaining paragraphs accord-
11 ingly;

1 (2) in paragraph (2), as redesignated, by striking
2 out "significant"; and by inserting after "military" the
3 following: "or economic";

4 (3) in paragraph (3), as redesignated, by inserting
5 after "exports of" the following: "goods and" and by
6 striking out "(and goods which contribute significantly
7 to the transfer of such technology"; and by inserting
8 after "military", the following: "or economic"; and

9 (4) by adding at the end of the section the follow-
10 ing:

11 “(5) The transfer of national security sensitive
12 technology and goods to the Soviet Union and other
13 countries where actions or policies are adverse to the
14 national security interests of the United States, has led
15 to the significant enhancement of Soviet bloc military-
16 industrial capabilities, thereby creating a greater threat
17 to the security of the United States, its allies, and
18 other friendly nations, and increasing the defense
19 budget of the United States.

20 “(6) Availability from foreign sources of goods and
21 technology controlled for national security purposes by
22 the United States is a fundamental concern of the
23 United States and should be eliminated whenever pos-
24 sible.

“(7) Exports that contribute to the excessive dependence of the United States, its allies, and countries sharing common strategic objectives, on energy resources and other critical resources of potential adversaries can be harmful to those countries’ mutual and individual security.

“(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of goods and technology which could make a contribution to the military or economic potential of any country or combination of countries which would be detrimental to the national security of the United States.”.

DECLARATION OF POLICY

SEC. 3. Section 3 of the Export Administration Act of 1979 is amended—

(1) in paragraph (2)(A), by striking out “significant”, and by inserting “or economic” after “military”;

(2) in paragraph (6), by inserting after “Government agencies” the following: “whenever appropriate”;

(3) in paragraph (11), by inserting after “products” the following: “, except in times of war or national emergency”; and

(4) by adding a new paragraph (11) the following:

1 “(12) It is the policy of the United States to en-
2 courage other friendly countries to cooperate in re-
3 stricting the sale of goods and technology that can
4 harm the security of the United States.

5 “(13) It is the policy of the United States to ne-
6 gotiate bilaterally and multilaterally to eliminate when-
7 ever possible the foreign availability of goods and tech-
8 nology similar in quantity and of comparable quality
9 with those controlled or proposed to be controlled for
10 national security purposes in the United States.

11 “(14) It is the policy of the United States to mini-
12 mize the dependence of countries who are allies of the
13 United States on the energy resources and other criti-
14 cal resources of potential adversaries through multilat-
15 eral controls on exports of critical energy equipment
16 and technology and other appropriate measures such as
17 the development of alternative supplies. Further, it is
18 the policy of the United States to minimize strategic
19 threats posed by excessive hard currency earnings de-
20 rived from such energy and critical resource exports by
21 countries with policies adverse to the national interests
22 of the United States.

23 “(15) It is the policy of the United States to sus-
24 tain vigorous scientific enterprise. To do so requires
25 protecting the ability of scientists and other scholars to

1 freely communicate their research findings by means of
2 publication, teaching, conferences, and other forms of
3 scholarly exchange, except when it is in the national
4 security interest of the United States to restrict such
5 activities in conjunction with export control policy.

6 “(16) It is the policy of the United States, par-
7 ticularly in light of the Soviet massacre of innocent
8 men, women, and children aboard Korean Air Lines
9 flight 7, to maintain the policy instituted after the
10 Soviet invasion of Afghanistan of disallowing United
11 States exceptions to the Cocom list for the Union of
12 Soviet Socialist Republics.”.

13 GENERAL PROVISIONS

14 SEC. 4. Section 4 of the Export Administration Act of
15 1979 is amended—

16 (1) in subsection (a) by striking paragraph (2) and
17 inserting in lieu thereof the following:

18 “(2) Validated licenses authorizing multiple ex-
19 ports, issued pursuant to an application by the export-
20 er, in lieu of an individual validated license for each
21 such export, including, but not limited to a distribution
22 license, authorizing exports of goods to approved dis-
23 tributors or users of the goods.”;

24 (2) in subsection (b), by striking “commodity”
25 each time it appears, and by striking “consisting of any

1 goods or technology subject to export controls under
2 this Act." and inserting in lieu thereof "stating license
3 requirements for exports of goods and technologies to
4 all destinations to which such exports are controlled
5 under this Act.";

6 (3) by striking out paragraph (3) and inserting in
7 lieu thereof the following:

8 "(3) In accordance with the provisions of this Act,
9 the Secretary shall issue export licenses for goods and
10 technology which the President has determined are
11 available without restriction from sources outside the
12 United States in comparable quantities and comparable
13 in quality to those produced in the United States,
14 unless the President determines that adequate evidence
15 has been presented to him demonstrating that the ab-
16 sence of such controls would prove detrimental to the
17 foreign policy or national security of the United States
18 and recognizing that bilateral or multilateral negotia-
19 tions may eliminate such foreign availability. Further,
20 the Secretary and the Secretary of Defense shall coop-
21 erate in the gathering and assessment of information
22 relating to the foreign availability, including the estab-
23 lishment and maintenance of a jointly operated comput-
24 er system."; and

(4) in subsection (f) by striking out "with a view to encouraging trade"; and by striking out "regularly" and inserting in lieu thereof: ", at his discretion,".

NATIONAL SECURITY CONTROLS

SEC. 5. Section 5 of the Export Administration Act of 1979 is amended—

(1) by inserting after the first sentence of subsection (a)(1) the following: "This authority includes the power to prohibit or curtail reexports of such goods and technologies and the transfer of goods or technologies within the United States to embassies and affiliates of countries to which exports of these goods or technologies are controlled.";

(2) in subsection (a)(2), by striking out "(A)", and by striking out paragraph (B) in its entirety;

(3) in subsection (a)(3), by striking out the last sentence;

(4) in subsection (b) by inserting after "as", the following: "whether its policies are adverse to the national security interests of the United States,";

(5) in subsection (c), by striking out "commodity" in paragraph (1);

(6) in subsection (d)(2), by striking out "and" at the end of subparagraph (B), by adding "and" at the

1 end of subparagraph (C), and by inserting after subpar-
 2 agraph (C) a new subparagraph (D), as follows:

3 “(D) goods (i) which would extend, complete,
 4 maintain, or modernize a process line employed in the
 5 application of a militarily critical technology, or (ii) the
 6 analysis of which would reveal or give insight into a
 7 United States military system and would thereby facili-
 8 tate either the design and manufacture of that system
 9 or the development of countermeasures against that
 10 system,”;

11 (7) in paragraph (2) of subsection (d), by inserting
 12 after “possessed by” the following: “or available in
 13 fact from sources outside the United States to”;

14 (8) in paragraph (4) of subsection (d), by striking
 15 out “October 1, 1980” and inserting in lieu thereof
 16 “January 1, 1985”;

17 (9) in paragraph (6) of subsection (d) by striking
 18 out “subsection” and inserting in lieu thereof “sec-
 19 tion”;

20 (10) by striking out paragraphs (3) and (4) of sub-
 21 section (e);

22 (11) in paragraph (1) of subsection (f), by inserting
 23 after “The Secretary, in consultation with” the follow-
 24 ing: “the Secretary of Defense and other”;

1 (12) in paragraphs (1) and (2) of subsection (f), by
2 striking out "sufficient" each time it appears and in-
3 serting in lieu thereof "comparable";

4 (13) in subsection (f), by striking out paragraph (3)
5 and inserting in lieu thereof the following:

6 "(3) The Secretary, at his discretion, shall make a
7 foreign availability assessment under paragraph (1) or
8 (2) on his own initiative or upon the receipt of an alle-
9 gation that such availability exists from an export li-
10 cense applicant. The Secretary shall consider the appli-
11 cant's representations made in writing and supported
12 by reliable evidence, unless such representations are
13 contradicted by reliable evidence, including scientific or
14 physical examination, expert opinion based upon ade-
15 quate factual information, or intelligence information.
16 The Secretary shall bear in mind that foreign availabil-
17 ity is not to be interpreted as the mere capacity to pre-
18 duce a good or technology. Determination of foreign
19 availability by the Secretary may include but not be
20 limited to consideration of the following factors: cost,
21 reliability, the availability and reliability of spare parts
22 and the cost and quality thereof, maintenance pro-
23 grams, technical data packages, backup packages, du-
24 rability, quality of end products produced by the item
25 proposed for export, and scale of production.";

1 (14) in paragraph (4) of subsection (f), by striking
2 out "take steps to initiate" and inserting in lieu thereof
3 "actively pursue";

4 (15) in paragraph (1) of subsection (h), by adding
5 after "Departments of Commerce, Defense, and State"
6 the following: ", the intelligence community,";

7 (16) by striking out paragraph (6) of subsection
8 (h);

9 (17) in subsection (i), by striking out paragraph
10 (3);

11 (18) in subsection (i)(4), by striking out "(4)" and
12 inserting in lieu thereof "(3)", and by striking out
13 "pursuant to paragraph (3)" and inserting in lieu
14 thereof "by the members of the Committee.";

15 (19) in subsection (i), by adding new paragraphs
16 (4), (5), and (6) as follows:

17 "(4) Agreement to accord the current multilateral
18 agreement treaty status.

19 "(5) Agreement to improve the International Con-
20 trol List and minimize the approval of exceptions to
21 that list, strengthen enforcement and cooperation in en-
22 forcement efforts, provide sufficient funding for Cocom,
23 and improve the structure and functions of the Cocom
24 Secretariat by upgrading professional staff, translation

1 services, data base maintenance, communications and
2 facilities.

3 “(6) Agreement to strengthen Cocom so that it
4 functions effectively in controlling export trade in a
5 manner that better protects the national security of
6 each participant to the mutual benefit of all.”;

7 (20) by striking subsection (j) and inserting in lieu
8 thereof the following:

9 “(j) **COMMERCIAL AGREEMENTS WITH CERTAIN**
10 **COUNTRIES.**—(1) Any United States firm, enterprise, or
11 other nongovernmental entity which enters into any agree-
12 ment with any agency of the government of a country to
13 which exports are restricted for national security purposes,
14 which calls for the encouragement of technical cooperation
15 and is intended to result in the export from the United States
16 to the other party of unpublished technical data of United
17 States origin, shall report the agreement with such agency
18 with sufficient detail to the Secretary.

19 “(2) The provisions of paragraph (1) shall not apply to
20 colleges, universities, or other educational institutions, except
21 where the unpublished technical data involve a technology
22 identified by the Secretary of Defense as a militarily critical
23 technology.”;

24 (21) in subsection (k), by adding after “with other
25 countries” the following: “, including those countries

1 not participating in the group known as the Coordinat-
 2 ing Committee," and by adding at the end thereof the
 3 following: "In cases where such negotiations produce
 4 agreement on export restrictions comparable in practice
 5 to those maintained by the Coordinating Committee,
 6 the Secretary shall treat exports to countries party to
 7 such agreements in the same manner as exports to
 8 members of the Coordinating Committee are treated.";

9 (22) by striking subsection (b) and inserting in lieu
 10 thereof the following:

11 "(b) DIVERSION TO MILITARY USE OF CONTROLLED
 12 GOODS OR TECHNOLOGY.—(1) Whenever there is reliable
 13 evidence that goods or technology which were exported sub-
 14 ject to national security controls under this section to a coun-
 15 try to which exports are controlled for national security pur-
 16 poses have been diverted to a military use or consignee in
 17 violation of the conditions of an export license, the Secretary
 18 for as long as that diversion continues—

19 "(A) shall deny all further exports to or by the
 20 party or parties who divert or conspire to divert any
 21 goods or technology subject to national security con-
 22 trols under this section to a military use or consignee
 23 regardless of whether such goods or technology are
 24 available to that country from sources outside the
 25 United States; and

1 “(B) may take such additional steps under this
2 Act with respect to the party or parties referred to in
3 subparagraph (A) as he determines are appropriate in
4 the circumstances to deter the further military use of
5 the previously exported goods or technology.

6 “(2) As used in this subsection, the term ‘diversion to a
7 military use or consignee’ means the use of United States
8 goods or technology to design or produce or maintain or con-
9 tribute to the design, production, or maintenance of any item
10 on the United States Munitions List, or the transfer of United
11 States goods or technology to any consignee or end user en-
12 gaged in or contributing to such design, production, or main-
13 tenance, or the military use of any item on the Cocom list.”;
14 and

15 (23) by adding the following new subsections:

16 “(m) **SECURITY MEASURES.**—The Commissioner of
17 Customs, in consultation with the Secretary and the Director
18 of the Federal Bureau of Investigation, shall provide advice
19 and technical assistance to persons engaged in the manufac-
20 ture or handling of goods or technology subject to controls
21 under this section to develop security systems to prevent vio-
22 lations or evasion of controls imposed under this section.

23 “(n) **RECORDKEEPING.**—The Secretary, the Secretary
24 of Defense, and any other department or agency consulted in
25 connection with a license application or revision of a list of

1 controlled commodities, goods, or technologies, shall make
 2 and keep records of their respective advice, recommenda-
 3 tions, or decisions, including the factual and analytical basis
 4 of the advice, recommendations, or decisions.

5 “(o) NATIONAL SECURITY CONTROL AGENCY.—To
 6 assist in carrying out the policy and other authorities and
 7 responsibilities of the Secretary of Defense under this section,
 8 there shall be established within the office of the Under Sec-
 9 retary of Defense for Policy a National Security Control
 10 Agency. The Secretary of Defense may delegate such of
 11 those authorities and responsibilities, together with such an-
 12 cillary functions, as he may deem appropriate to the Agency.

13 “(p) EXCLUSION FOR AGRICULTURAL COMMOD-
 14 ITIES.—This section does not authorize export controls on
 15 agricultural commodities, including fats and oils or animal
 16 hides and skins, except in time of war or national emergency.

17 “(q)(1) Notwithstanding any other provision of this sec-
 18 tion, the President shall require an individual validated li-
 19 cense for export of United States goods or technology, or by
 20 persons subject to United States jurisdiction, the ultimate
 21 destination of which is a country possessing nuclear weapons,
 22 unless such country is a member of the North Atlantic Treaty
 23 Organization or has ratified and is in full compliance with the
 24 requirements of the Nuclear Non-Proliferation Treaty.

1 “(2) The President may waive this requirement with
2 regard to specific exports or classes of exports to such coun-
3 try if he certifies to Congress in writing that—

4 “(A) such country, or any of its agents or repre-
5 sentatives, for the preceding twelve-month period has
6 not obtained or endeavored to obtain United States
7 goods or technology, or exports directly or indirectly
8 from persons subject to United States jurisdiction, in
9 violation of this Act, the Arms Export Control Act of
10 1976, or the Atomic Energy Act of 1954, or any rules
11 and regulations issued pursuant to any of these Acts;

12 “(B) such export or class of exports cannot be
13 used to contribute to the ability of such country to
14 manufacture, employ, or enhance the capability or ef-
15 fectiveness of, nuclear weapons or the real or potential
16 delivery systems of such weapons;

17 “(C) such export or class of exports cannot be
18 used to contribute to the ability of such country to
19 manufacture, employ, or enhance the capability or ef-
20 fectiveness of real or potential antisubmarine warfare
21 systems;

22 “(D) such export or class of exports cannot be
23 used to contribute to the ability of such country to
24 manufacture, employ, or enhance the capability or ef-

1 fectiveness of real or potential electronic warfare sys-
2 tems;

3 “(E) such export or class of exports cannot be
4 used to contribute to the ability of such country to
5 manufacture, employ, or enhance the capability or ef-
6 fectiveness of real or potential intelligence gathering
7 systems; and

8 “(F) it is in the national security and foreign
9 policy interests of the United States that this require-
10 ment be waived, particularly that such waiver will not
11 be detrimental to the security of our allies.

12 Any waiver of this paragraph shall remain in effect for not
13 more than one year from the date of the President's certifica-
14 tion to the Congress as provided for by this subsection and
15 may be renewed for subsequent one-year periods should the
16 President at the time of such renewal make the certification
17 to the Congress as required by this subsection. The President
18 may rescind such waiver at any time.

19 “(3) The provisions of this subsection shall apply only to
20 exports to such countries which are also controlled by vali-
21 dated licenses pursuant to this section for export to group Y
22 countries as defined by the Export Administration Regula-
23 tions.”.

FOREIGN POLICY CONTROLS

SEC. 6. Section 6 of the Export Administration Act is amended --

(1) by inserting after the first sentence of paragraph (1) of subsection (a) the following: "Whenever the authority conferred by this section is exercised with respect to a country, the President is also authorized to impose controls on imports from that country to the United States.";

(2) by striking out subsection (f) and inserting in lieu thereof the following:

"(f) **EXCLUSION FOR MEDICINE AND MEDICAL SUPPLIES.**-- This section does not authorize export controls on medicine or medical supplies or on donations of items intended to meet basic human needs such as food, educational materials, seeds and hand tools, medicines and medical supplies, water resources equipment, clothing and shelter materials, and basic household supplies except to the extent that the President determines that such exports are in response to coercion against the proposed recipient or donor, or would endanger the Armed Forces of the United States or United States citizens living and working abroad by contributing to the potential of a terrorist organization or group. This subsection shall not be construed to prohibit the President from imposing restrictions on medicine or medical supplies or other

1 goods under the International Emergency Economic Powers
2 Act.”;

3 (3) in subsection (i) by striking out “\$7,000,000”
4 and inserting in lieu thereof “\$1,000,000”; and by in-
5 serting the following new paragraph at the end of the
6 subsection: “No license shall be approved for an export
7 to a terrorist organization or group residing in, or
8 active in, any country or to any intermediary or agent
9 of such organization or group.”; and

10 (4) by striking out “commodity” in the first sen-
11 tence, and by striking out the second sentence of sub-
12 section (k) and inserting in lieu thereof “The Secretary
13 shall clearly identify on the control list which goods
14 and technical data and countries or destinations are
15 subject to which types of controls under this section.”.

16 SHORT SUPPLY CONTROLS

17 SEC. 7. Section 7 of the Export Administration Act of
18 1979 is amended by striking subsection (j).

19 PROCEDURES FOR PROCESSING EXPORT LICENSE

20 APPLICATIONS

21 SEC. 8. Section 10 of the Export Administration Act of
22 1979 is amended—

23 (1) by inserting in paragraph (3) of subsection (f)
24 after “the policies set forth in section 3 of this Act
25 which would be furthered by denial,” the following:

1 "what if any modifications in or restrictions on the
2 goods or technology for which the license was sought
3 would allow such export to be compatible with controls
4 imposed under this Act, and which officers and em-
5 ployees of the Department of Commerce who are fa-
6 miliar with the application will be made reasonably
7 available to the applicant for considerations with
8 regard to such modifications or restrictions, if
9 appropriate,";

10 (2) by striking out paragraph (1) of subsection (g)
11 and inserting in lieu thereof the following:

12 "(1) Notwithstanding any other provision of this section,
13 the Secretary of Defense is authorized to review any pro-
14 posed export of any goods or technology, whether by single
15 or by multiple license, to any country to which exports are
16 controlled for national security purposes, or where the Secre-
17 tary of Defense, in consultation with the Secretary, deter-
18 mines that there is a clear risk of diversion of militarily criti-
19 cal goods or technology to proscribed destinations. Whenever
20 the Secretary of Defense determines that the export of any
21 such goods or technology will prove detrimental to the na-
22 tional security of the United States by making a significant
23 contribution to the military potential of any such country, or
24 constituting a clear risk of diversion to a proscribed destina-
25 tion of militarily critical goods or technology, the Secretary

1 of Defense shall recommend to the President that such export
2 be disapproved.”;

3 (3) in paragraph (2) of subsection (g), by inserting
4 after “category,” in the second sentence the following:
5 “or where there is a clear risk of diversion of militarily
6 critical goods or technology to proscribed destina-
7 tions,”; and

8 (4) in paragraph (2) of subsection (g), by inserting
9 after the first sentence the following: “If the Secretary
10 and the Secretary of Defense are unable to concur on
11 the types and categories of transactions or on any pro-
12 posed export of goods or technology which should be
13 referred to the Secretary of Defense for review, the
14 matter shall be referred to the President for resolu-
15 tion.”.

16 VIOLATIONS

17 SEC. 9. Section 11 of the Export Administration Act of
18 1979 is amended—

19 (1) by inserting in subsection (a) after “violates”
20 the following: “or conspires to or attempts to violate”;

21 (2) by striking in paragraph (1) of subsection (b)
22 “exports anything contrary to” and inserting in lieu
23 thereof “violates or conspires to or attempts to vio-
24 late”;

1 (3) by inserting in paragraph (1) of subsection (b)
2 after "benefit of" the following: "or that the destina-
3 tion or intended destination of the goods or technology
4 involved is", and by striking "restricted" and inserting
5 in lieu thereof "controlled";

6 (4) by adding at the end of paragraph (1) of sub-
7 section (b) the following new sentence: "For purposes
8 of this subsection, a country to which exports are con-
9 trolled for national security purposes is one identified
10 pursuant to the determinations made in accordance
11 with section 5(b) of this Act.";

12 (5) by inserting after paragraph (2) of subsection
13 (b) the following new paragraphs:

14 "(3) Whoever possesses any goods or technology with
15 the intent to export them contrary to this Act or any regula-
16 tion, order, or license issued thereunder shall be subject to
17 the penalties as provided in subsection 11(a), except for a
18 national security violation which would be subject to the pen-
19 alties as provided in section 11(b)(1).

20 "(4) Whoever, including a country or countries, violates
21 controls imposed under section 5 or 6 of this Act, or any
22 regulation, order, or license related thereto, whenever the
23 United States is engaged in active hostilities against any
24 nation to which exports are controlled for national security or
25 foreign policy purposes, shall be subject to such controls on

1 the importing of goods or technology into the United States
2 as the President may prescribe.

3 “(5) Nothing in this subsection or subsection (a) shall
4 limit the power of the Secretary to define by regulations vio-
5 lations under this Act.”;

6 (6) in subsection (c), by striking out “head” and
7 all that follows through “thereof” and inserting in lieu
8 thereof “Commissioner of the United States Customs
9 Service of the Department of the Treasury (and offi-
10 cers or employees of the Service specifically designated
11 by the Commissioner)”;

12 (7) by adding at the end of subsection (c) the fol-
13 lowing new paragraphs:

14 “(3) In addition to any other authority under this Act,
15 the Secretary may revoke or suspend the authority to export
16 of any person convicted of a violation of any other provision
17 of Federal law arising out of the export of goods or technol-
18 ogy prohibited by or under this Act.

19 “(4) Whoever violates any national security control im-
20 posed under section 5 of this Act, or any regulations, order,
21 or license related thereto, or any regulation issued pursuant
22 to a multilateral agreement to control exports for national
23 security purposes, to which the United States is a party, may
24 be subject to such controls on the importing of goods or tech-

1 nology into the United States or territories and possessions
2 as the President may prescribe.”;

3 (8) by inserting in subsection (e) after “subsection
4 (c)” the words “or any amounts realized from the for-
5 feiture of property interest or proceeds forfeited pursu-
6 ant to subsection (g)”, and by inserting after “refund
7 any such penalty” the words “imposed pursuant to
8 subsection (c)”;

9 (9) by striking out the second sentence of subsec-
10 tion (f);

11 (10) by redesignating subsection (g) as subsection
12 (i) and inserting the following new subsections:

13 “(g) FORFEITURE OF PROPERTY INTEREST AND PRO-
14 CEEDS.—(1) Whoever has been convicted of a national secu-
15 rity export control violation under subsection (a) or (b) shall,
16 in addition to any other penalty, forfeit to the United
17 States—

18 “(A) any of his interest in, security of, claim
19 against, or property or contractual rights of any kind in
20 the goods or technology that were the subject of the
21 violation;

22 “(B) any of his interest in, security of, claim
23 against, or property or contractual rights of any kind in
24 property that was used to facilitate the commission of
25 the violation; and

1 “(C) any of his property constituting, or derived
2 from, any proceeds obtained directly or indirectly as a
3 result of such violations.

4 “(2) The procedures in any criminal forfeiture under this
5 section, and the duties and authority of the courts of the
6 United States and the Attorney General with respect to any
7 criminal forfeiture action under this section or with respect to
8 any property that may be subject to forfeiture under this sec-
9 tion, are to be governed by the provisions of section 1963 of
10 title 18, United States Code.

11 “(h) **PRIOR CONVICTIONS.**—No person convicted of a
12 violation of section 793, 794, or 798 of title 18, United
13 States Code, section 4(b) of the Internal Security Act of
14 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export
15 Control Act (22 U.S.C. 2778), shall be eligible at the discre-
16 tion of the Secretary, to apply for or use any export license
17 for a period for up to ten years from the date of conviction.
18 Any outstanding export license in which such person has an
19 interest may be revoked at the discretion of the Secretary at
20 the time of conviction.”; and

21 (11) by striking “or” after “(d),” in subsection (i)
22 as redesignated, and inserting after “(f)” the following:
23 “, (g), or (h)”.

ENFORCEMENT

1

2 SEC. 10. Section 12 of the Export Administration Act
3 of 1979 is amended—

4 (1) in subsection (a), by inserting “(1)” after
5 “GENERAL AUTHORITY.—”;

6 (2) in subsection (a), by striking “the district court
7 of the United States for any district in which such
8 person is found or resides or transacts business, upon
9 application, and”, and inserting in lieu thereof “a dis-
10 trict court of the United States,”;

11 (3) in subsection (a), by striking out “head” and
12 all that follows through “thereof” and inserting in lieu
13 thereof “Commissioner of the United States Customs
14 Service of the Department of the Treasury (and offi-
15 cers or employees of the Service specifically designated
16 by the Commissioner)”;

17 (4) by adding at the end of subsection (a) the fol-
18 lowing new paragraphs:

19 “(2) An officer of the United States Customs Service of
20 the Department of the Treasury or other person authorized
21 to board or search vessels who has reasonable cause to sus-
22 pect that any goods or technology have been or will be ex-
23 ported from the United States in violation of any Act govern-
24 ing exports may—

1 “(A) stop, search, and examine, within or without
2 his district, a vehicle, vessel, aircraft, or person, on
3 which or whom he has reasonable cause to suspect
4 there are any such goods or technology, whether by
5 the person in possession or charge or by, in, or upon
6 such vehicle, vessel, aircraft, or otherwise;

7 “(B) search, wherever found, any package or con-
8 tainer in which he has reasonable cause to suspect
9 there are any such goods or technology; and

10 “(C) seize and secure for trial any such goods or
11 technology on or about vehicle, vessel, aircraft, or
12 person, or in such package or container.

13 “(3)(A) An officer of the United States Customs Service
14 of the Department of the Treasury or other person authorized
15 to board or search vessels may, while in the performance of,
16 and in connection with, official duties, make arrests without
17 warrant in the enforcement of the provisions of any Act gov-
18 erning exports. The arrest authority conferred by this subsec-
19 tion is in addition to any arrest authority under other laws.

20 “(B) If such officer or person has reasonable cause to
21 suspect that any goods or technology have or would have
22 been exported from the United States in violation of any Act
23 governing exports, the officer or person shall refer such
24 matter to the Secretary of the Treasury, or his designee, or

1 the Attorney General for civil or criminal action, respective-
 2 ly, in accordance with this section.”;

3 (5) in the first sentence of paragraph (3) of sub-
 4 section (c), by striking out “department or agency with
 5 enforcement responsibilities under this Act” and insert-
 6 ing in lieu thereof “United States Customs Service of
 7 the Department of the Treasury (and officers or em-
 8 ployees of the Service specifically designated by the
 9 Commissioner)”; and

10 (6) by inserting in subsection (c)(3): “, including
 11 information pertaining to subjects of ongoing investiga-
 12 tions,” after “enforcement of this Act” in the first sen-
 13 tence; and by adding at the end thereof the following:
 14 “The Secretary shall consult on a continuing basis
 15 with the Attorney General, the Commissioner of Customs,
 16 and the heads of other departments and agencies
 17 which obtain information subject to this paragraph to
 18 facilitate the sharing of such information.”.

19 ANNUAL REPORT

20 SEC. 11. Section 14 of the Export Administration Act
 21 of 1979 is amended—

22 (1) by inserting “AND QUARTERLY” after
 23 “ANNUAL” in the section heading; and

24 (2) by adding at the end thereof the following:

1 “(d) FOREIGN AVAILABILITY REPORT.—The Secre-
 2 tary and the Secretary of Defense shall jointly prepare and
 3 transmit to the Committee on Banking, Housing, and Urban
 4 Affairs of the Senate and the Committee on Foreign Affairs
 5 of the House of Representatives quarterly reports on the op-
 6 eration and improvement of the Government’s ability to
 7 assess foreign availability, including but not limited to train-
 8 ing of personnel, use of computers, and utilization of Foreign
 9 Commercial Service Officers and on the operation and im-
 10 provement of the Government’s efforts to eliminate foreign
 11 availability, including but not limited to bilateral and multi-
 12 lateral negotiations.

13 “(e) REPORT ON EXPORTS TO CONTROLLED COUN-
 14 TRIES.—The President shall include in each annual report a
 15 detailed report which lists every license approved to con-
 16 trolled countries specifying the person to whom such license
 17 was granted, the type of good or technology exported, and
 18 the country receiving such exported good or technology.

19 “(f) REPORT ON DOMESTIC ECONOMIC IMPACT OF
 20 EXPORTS TO CONTROLLED COUNTRIES.—The President
 21 shall include in each annual report a detailed report which
 22 reports the extent of injury to United States’ industry and the
 23 extent of job displacement caused by United States’ exports
 24 of goods and technology to controlled countries. The report
 25 shall include a full analysis of the consequences of exports to

1 controlled countries of turnkey plants which are used by such
2 countries to produce goods for United States domestic and
3 export markets.”.

4 UNDER SECRETARY OF COMMERCE FOR EXPORT
5 ADMINISTRATION

6 SEC. 12. (a) Section 15 of the Export Administration
7 Act of 1979 is amended—

8 (1) by inserting “ADMINISTRATIVE AND” before
9 “REGULATORY” in the caption;

10 (2) by designating the matter following “SEC.
11 15.” as subsection (b); and

12 (3) by inserting after “SEC. 15.” the following:

13 “(a) The President shall appoint, by and with the advice
14 and consent of the Senate, an Under Secretary of Commerce
15 for Export Administration who shall carry out all functions of
16 the Secretary of Commerce under this Act which were dele-
17 gated to the office of the Assistant Secretary of Commerce
18 for Trade Administration prior to the effective date of the
19 Export Administration Act Amendments of 1983 and such
20 other functions as the Secretary may prescribe.”.

21 (b) Section 5314 of title 5, United States Code, is
22 amended by inserting “Under Secretary of Commerce for
23 Export Administration,” before “and Under”.

DEFINITIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SEC. 13. Section 16 of the Export Administration Act of 1979 is amended—

(1) by striking paragraph (4) and inserting in lieu thereof the following:

“(4) the term ‘technology’ means technological or technical data, and shall include information or know-how of any kind that can be used or adapted for use in the design, production, manufacture, repair, overhaul, processing, engineering, development, operation, maintenance, or restoration of goods or commodities, including computer software. Information or know-how may take tangible form, such as models, prototypes, drawings, sketches, diagrams, blueprints, or manuals, or take an intangible form, such as training or technical services. Technological data shall also include all goods or commodities that will be used in the industrial application of the technological information, regardless of the end-use classification of the goods or commodities;”;

(2) in paragraph (3), by inserting after “article,” “natural or manmade substance,”; and

(3) by redesignating paragraph (5) as paragraph (8), and by inserting the following new paragraphs:

“(5) the term ‘export of goods’ means—

1 “(A) an actual shipment or transmission of
2 goods out of the United States, or

3 “(B) an actual shipment or transmission of
4 goods, or portions thereof, originally exported
5 from the United States to any destination other
6 than that indicated to the appropriate United
7 States authority as the initial destination of the
8 goods at the time of the original export from the
9 United States;”;

10 “(6) the term ‘export of technology’ means—

11 “(A) an actual shipment or transmission of
12 technology out of the United States; or

13 “(B) any release of technology of United
14 States origin in a foreign country;”;

15 “(7) the term ‘United States’ means the States of
16 the United States, its commonwealths, territories, de-
17 pendencies, and the District of Columbia;”.

18 OFFICE OF STRATEGIC TRADE

19 SEC. 14. The Export Administration Act of 1979 is
20 amended by adding at the end thereof the following new sec-
21 tion:

22 “OFFICE OF STRATEGIC TRADE

23 “SEC. 25. The President shall submit to the Congress,
24 not later than March 15, 1984, a proposal to create an Office
25 of Strategic Trade. In developing his proposal, the President

1 shall take into account, among other things, the need for
 2 better coordination of export licensing responsibilities and
 3 procedures, improved enforcement of this Act and other laws
 4 that provide authority to impose controls on exports, repre-
 5 sentation of the United States in the Coordinating Committee
 6 for Multilateral Export Controls (Cocom), through monitoring
 7 and analysis of data relating to technology and technological
 8 transfer, evaluation of technological changes that are rele-
 9 vant to the export licensing process, and more effective liai-
 10 son with the business community and others affected by the
 11 export licensing process."

12 **AMENDMENT TO INTERNATIONAL EMERGENCY ECONOMIC**
 13 **POWERS ACT**

14 **SEC. 15.** Section 203(a)(1) of the International Emer-
 15 gency Economic Powers Act (50 U.S.C. 1202) is amended—

16 (1) by striking out "and" at the end of subpara-
 17 graph (A);

18 (2) by inserting "and" at the end of subparagraph
 19 (B); and

20 (3) by inserting after subparagraph (B) the follow-
 21 ing new subparagraph:

22 "(C) impose controls on exports of goods or tech-
 23 nology from United States companies, or their subsid-
 24 iaries or licensees operating outside the United
 25 States;"

1

AUTHORIZATION

2

SEC. 16. Section 18 of the Export Administration Act
3 of 1979 is amended by striking paragraph (1) of subsection (b)
4 and inserting in lieu thereof:

5

“(1) \$11,610,000 for each of the fiscal years

6

1984 and 1985, and”.

7

TERMINATION DATE

8

SEC. 17. Section 20 of the Export Administration Act
9 of 1979 is amended by striking out “February 29, 1984”,
10 and inserting in lieu thereof “September 30, 1989”.

11

AMENDMENT TO MAGNUSON ACT

12

SEC. 18. Clause (viii) of section 201(e)(1)(E) of the Mag-
13 nuson Fishery Conservation and Management Act (16 U.S.C.
14 1821(e)(1)(E)) is amended by inserting “fishery” before
15 “matters”.

16

EFFECT ON OTHER ACTS

17

SEC. 19. Section 17 of the Export Administration Act is
18 amended by adding at the end thereof the following:

19

“(f) AGRICULTURAL ACT OF 1970.—Nothing in this
20 Act shall affect the provisions of the last sentence of section
21 812 of the Agricultural Act of 1970 (7 U.S.C. 612c-3).”

○